

Response Under 37 CFR 1.116
Expedited Procedure
Examining Group 1651
Application No. 10/531,846
Paper Dated: December 30, 2008
In Reply to USPTO Correspondence of September 30, 2008
Attorney Docket No. 4544-051198

REMARKS

Claims 14-28 are currently pending in the application, with claim 14 being the sole independent claim. Claims 15 and 26 have been amended in view of the rejections under 35 U.S.C. §112, first and second paragraphs.

On page 1 of the Office Action the Examiner requested the reference to Fig. 1 at page 8, line 3 (i.e. [0025]) be removed to clarify the invention. Paragraph [0025] has been removed from the specification by this Amendment.

Claim rejections under 35 U.S.C. §112, first paragraph

The Office Action rejects claims 14-28 under 35 U.S.C §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor had possession of the claimed invention at the time the application was filed. Specifically the Examiner asserts that there is no support in the specification for “a modified chemically defined growth medium” as described in claim 14. The rejection of claims 14 and 16-28 is an error since the term “a modified chemically defined growth medium” only appears in dependent claim 15, from which no other claims depend. This error has been confirmed through a telephone conversation with Examiner Irene Marx. To overcome the rejection of claim 15, Applicant has removed the phrase “a modified chemically defined growth medium” and has replaced it with “a modified liquid medium containing a nutrient source.” Support for this Amendment is found, for example, in paragraph [0010] of the specification as originally filed. Claim 15 is now believed to be in condition for allowance. Removal of the rejection under 35 U.S.C. §112, first paragraph, and allowance of claim 15 is respectfully requested.

Claim rejections under 35 U.S.C. §112, second paragraph

Claim 26 has been amended in accordance with the Examiner’s suggestion on page 2 of the Office Action to recite “....extraction is a polar solvent.”

In view of the amendments made herein, it is respectfully requested that the rejection of claims 26 under 35 U.S.C. §112, second paragraph, be withdrawn.

Response Under 37 CFR 1.116

Expedited Procedure

Examining Group 1651

Application No. 10/531,846

Paper Dated: December 30, 2008

In Reply to USPTO Correspondence of September 30, 2008

Attorney Docket No. 4544-051198

Rejections under 35 U.S.C. §112, first paragraph, Deposit of Biological Material

Claims 14-28 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In particular, the Office Action notes that the invention appears to employ a specific strain of *A. alternata* and it is not clear if the written description is sufficiently repeatable to avoid the need for a deposit and it is not clear if the starting materials were readily available to the public at the time of the invention.

Alternaria alternata f.sp. *lantanae* have been deposited at the Indian Agricultural Research Institute-Division of Plant Pathology, Indian Agriculture Research Institute (IARI), New Delhi 110 012 under the Budapest Treaty as Deposit No. ITCC-4896. It is noted that the IARI is not an internationally recognized depository.

Accordingly, the *Alternaria alternata* f.sp. *lantanae* have now been deposited at the Microbial Type Culture Collection & Gene Bank, Institute of Microbial Technology, (MTCC) Sector 39-A, Chandigarh, India under the Budapest Treaty.

- The date of the deposit: July 25, 2008;
- The **deposit accession number**: MTCC 5432;
- Name and Address of the Depository (MICROBIAL TYPE CULTURE COLLECTION & GENE BANK (MTCC) Sector 39-A, Chandigarh 160 036, India); and
- Taxonomic description: *Alternaria alternata* f.sp. *lantanae* ITCC 4896 (LC#508)

This information has now been incorporated into paragraph [001] of the specification and is believed to comply with 37 C.F.R. 1.801-1.809. A copy of the deposit information is also submitted with this Amendment. Claims 14-28 are now believed to comply with 35 U.S.C. §112, first paragraph. Therefore, removal of the rejection and allowance of claims 14-28 is respectfully requested.

Response Under 37 CFR 1.116

Expedited Procedure

Examining Group 1651

Application No. 10/531,846

Paper Dated: December 30, 2008

In Reply to USPTO Correspondence of September 30, 2008

Attorney Docket No. 4544-051198

CONCLUSION

In view of the above amendments and remarks, reconsideration of the rejections and allowance of claims 14-28 is respectfully requested.

Respectfully submitted,
THE WEBB LAW FIRM

By Taressa J. Fenus
Taressa J. Fenus
Registration No. 60792
Attorney for Applicant
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com